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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 TYRONE SHERROD and CHONG
10 SHERROD, Individually and as Husband
11 and Wife ,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA; and
15 UNKNOWN JOHN DOES AND JOHN
16 DOE CLINICS,

17 Defendants.

9 CAUSE NO.

10 COMPLAINT FOR MEDICAL
11 NEGLIGENCE

18 I. PARTIES

19 1.1 Tyrone Sherrod and Chong Sherrod are the Plaintiff's in this matter. At
20 all times material hereto, plaintiff's resided in Tacoma, Pierce County, Washington.

21 1.2 Defendant United States of America is named on the basis of the
22 determination pursuant to 28 U.S.C. Sec. 2671 that VA Puget Sound Health Care
23 System and its physicians, employees, and agents are employees and agents of the
24 Government.
25

1 1.4 Plaintiffs allege that there may be other health care providers, persons,
 2 or entities whose negligence contributed to Plaintiffs' injuries and damages, but whose
 3 identity is not now known and who are referred to herein as Unknown John Does.
 4 Plaintiffs request that these pleadings be amended to reflect the true identities of these
 5 Defendants if and when they are identified.

6 1.5 Plaintiffs allege that there may be other Clinics, Corporations or
 7 Partnerships that employed individuals mentioned in the paragraphs above, such as to
 8 make these John Doe Clinics, Corporations or Partnerships responsible, whose
 9 negligence contributed to Plaintiff's injuries and damages, but whose identity is not
 10 now known and who are referred to herein as Unknown John Doe Clinics,
 11 Corporations or Partnerships. Plaintiffs request that these pleadings be amended to
 12 reflect the true identities of these Defendants if and when they are identified.

14 II. JURISDICTION AND VENUE

15 2.1 On September 19, 2011, Plaintiff submitted a Claim for Damage,
 16 Injury, or Death Tort Claim form (*See Exhibit 1, attached*). The VA Regional
 17 Counlse, in Seattle, WA, received the claim form on December 23, 2011. On June 10,
 18 2014, Plaintiff received a letter from the U.S. Department of Veterans Affairs denying
 19 the Federal Tort Claim. (*See Exhibit 2, attached*). Therefore, this Court has
 20 jurisdiction over the claims against the United States of America pursuant to 28 U.S.C.
 21 Sec. 2675(a).

22 2.2 Venue in this Court is proper pursuant to 28 U.S.C. sec. 1402(b).

III. STATEMENT OF CLAIMS

3.1 On May 26, 2011, Plaintiff Tyrone Sherrod saw podiatrist Barney Yanklowitz, M.D.

3.2 Plaintiff described pain that he was experiencing on his right foot when he wore snug fitting shoes.

3.3 Dr. Yanklowitz, without wearing any gloves or washing his hands, inspected his right foot and identified a soft tissue matter embedded and protruding from between Plaintiff's fourth and fifth toes.

3.4 Dr. Yanklowitz proceeded to remove this tissue matter with a scalpel that was neither sterilized nor removed from any kind of packaging, nor did he wear any medical gloves.

3.5 The effort needed to keep Mr. Sherrod's fourth and fifth toes separated to remove the tissue involved Dr. Yanklowitz's ungloved hands being placed all over Mr. Sherrod's foot, as well as the wound that this procedure was creating.

3.6 The procedure drew blood that required pressure from gauze.

3.7 Approximately eight days later Mr. Sherrod began experiencing pain in his right thigh, with the pain becoming worse and worse.

3.8 By June 11, 2011, Mr. Sherrod was having a hard time using his leg due to the severe pain he was experiencing.

3.9 On June 13, 2011, the pain was so unbearable that Mr. Sherrod was taken to Madigan Army Medical Center Emergency Room.

3.10 Mr. Sherrod was treated for severe MRSA infection, underwent three surgeries, and was admitted for nearly 30 days with extensive follow up care.

1 3.11 Mr. Sherrod has scarring, disfigurement and permanent muscle damage due
 2 to the negligence of Dr. Yanklowitz.

3 **IV. CLAIMS AGAINST THE UNITED STATES OF AMERICA**

4 4.1 As alleged above, the VA Puget Sound Health Care System and its
 5 employees are employees of the Government pursuant to 28 U.S.C. Sec. 2671.
 6 Therefore, the proper defendant in this matter is the United States of America.
 7

8 4.2 Medical Negligence. Defendant United States of America, by and
 9 through its employees and agents, VA Puget Sound Health Care System, failed to
 10 exercise the degree of care, skill and learning expected of reasonably prudent health care
 11 providers in the same profession or class in the State of Washington acting in the same
 12 or similar circumstances. Failure to exercise reasonable care includes, but is not limited
 13 to, proper sanitation requirements, use of sterile equipment, and infection prevention
 14 protocols. Such conduct proximately caused severe injuries and damage to plaintiff.
 15 Such conduct establishes claims under RCW 4.24, RCW 7.70 and other applicable law.
 16

17 4.3 Negligence. The VA Puget Sound Health Care system failed to exercise
 18 the degree of care, skill and learning expected of reasonably prudent health care
 19 providers in the same profession or class in the State of Washington acting in the same
 20 or similar circumstances. If the actions of defendant fall outside of these parameters,
 21 negligence has occurred.
 22

23 4.4 Informed Consent. Defendant United States of America, by and
 24 through VA Puget Sound Health Care System and its employees, breached its duty to
 25 inform plaintiff of all material facts, including risks and alternatives, which a
 26 reasonably prudent patient would need to make an informed decision on whether to

consent to or reject proposed courses of treatment. This conduct proximately caused injury to plaintiff.

4.5 Corporate Negligence. Defendant United States is liable under the doctrine of corporate negligence, WPI 105.02.02. Defendant Hospital owes an independent duty of care to its patients and has a duty to exercise the degree of skill, care, and learning expected of a reasonably prudent hospital. Defendant is responsible for all acts and omissions of its employees, agents, independent contractors and is responsible for adequate supervision of its staff members. Defendant United States of America is further responsible for implementing policies and procedures to ensure proper staffing and credentialing.

V. PROXIMATE CAUSE

5.1 The conduct of defendants herein was the proximate cause of plaintiff's injuries and damages as outlined below.

VI. INJURIES AND DAMAGES

6.1 The acts and omissions of Defendants directly and proximately caused plaintiff to suffer severe and permanent injury, both mental and physical, pain and suffering, mental anguish, disability, disfigurement, and other elements of damages as allowed by law.

6.2 Plaintiff incurred out-of-pocket expenses, including but not limited to medical expenses, income loss, and other expenses in an amount that will be proven at trial.

1 WHEREFORE, having set forth their complaints, Plaintiff requests that the
2 Court enter judgment against Defendants, jointly and severally, for all injuries and
3 damages sustained by the Plaintiff in the amounts to be proven in trial, together with
4 their reasonable costs and fees incurred herein, and such further relief as justice
5 requires.

6 DATED this 15th day of October, 2014.
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8 HOLMAN LAW, PLLC

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11 Jessica F. Holman, WSBA No. 43065
12 Attorney for Plaintiff